

To: OITA-AIEO[OITAAIEO@epa.gov]
From: Byrne, Andrew
Sent: Mon 8/29/2016 9:40:22 PM
Subject: Law360 article - Standing Rock Sioux

As described in title, article is a good summary of ongoing issue:

A Cheat Sheet To The Sioux Fight To Stop The Dakota Pipeline

Share us on: By **Andrew Westney**

Law360, New York (August 26, 2016, 5:27 PM ET) -- With a D.C. federal judge poised to decide whether to halt construction of the \$3.8 billion Dakota Access crude oil pipeline through lands sacred to the Standing Rock Sioux Tribe, Law360 offers a cheat sheet on what's at stake in the multifront battle and how one tribe's defiance became a cause celebre that threatens to take down the entire project.

The tribe claims the U.S. Army Corps of Engineers gave short shrift to the tribe's concerns for tribal burial grounds and sacred sites it says are put at risk by the Dakota Access Pipeline, a 1,168-mile project that would transport crude oil from North Dakota to Illinois, and pressed U.S. District Judge James E. Boasberg **on Wednesday** to grant a preliminary injunction — a move the pipeline's developer, Energy Transfer Partners LP unit Dakota Access LLC, says could cost hundreds of millions of dollars or even bring the project to a permanent end.

The tribe only **filed its complaint** against the Corps on July 27, but the suit — coupled with the tribe's vigorous protests at a camp near the confluence of the Missouri and Cannonball rivers in North Dakota at the border of the tribe's reservation, and a suit by Dakota Access to quell those demonstrations — has attracted intense media coverage and the support of politicians and Hollywood stars.

But more worrying for those pursuing projects in Indian Country may be other tribes' readiness to support the Standing Rock Sioux in their fight, putting developers on notice that tribes won't back down if they believe their lands are threatened and they haven't been given enough chance to defend them.

"It's great that there's a focus on the tribe and their fight is getting attention," said Stephanie Tsosie of Earthjustice, which represents the tribe in the case. "[Standing Rock Chairman Dave Archambault II] has been great in interacting with the media and eloquently bringing attention to these issues. It's important for the tribe to have a lot of support, and I also think it's important for Indian Country as an opportunity to band together."

The Pipeline Plan

The Dakota Access Pipeline, which will cross four states when it is completed, is intended to deliver crude oil from the Bakken and Three Forks shale formations in northwestern North Dakota to the Patoka Hub in southern Illinois. From there, it will connect to the Energy Transfer Crude Oil Pipeline, which terminates in Texas.

The pipeline would transport about 470,000 barrels per day and could carry up to 570,000 barrels daily or more, which would be about half of all daily crude oil production from the Bakken formation.

Energy Transfer says on its website for the project that it will make transporting oil safer and cheaper in the region and lower the use of trains and trucks to transport crude oil from the Bakken shale formation.

That's a key concern after several high-profile accidents and suits involving the shipping of Bakken oil, which critics say is more volatile than other crude oil. The litigation includes the Swinomish Indian Tribal Community's **bid to block** BNSF Railway Co. from shipping any Bakken oil across its reservation land.

Despite those issues, Dakota Access started construction in May after saying it had **received permission** from every landowner in the Dakotas for the project to cross their land, with only a small percentage of landowners in Iowa and Illinois still holding out.

But some tribes staunchly opposed the project, with the Iowa Tribe of Kansas and Nebraska in March **blasting** the state of Iowa and Dakota Access for allegedly failing to consult with the tribe regarding the preservation of historic and cultural sites. That didn't stop the Iowa Utilities Board from **giving the green light** in June to begin construction on the pipeline in the state, even though the company hadn't yet received all the clearances it needed from the Corps and the state.

Army Corps Approval Triggers Tribe's Suit

The Standing Rock Sioux Tribe, too, contends that it wasn't consulted sufficiently during the planning of the pipeline, which it opposed from the time it learned about the proposed project in 2014, and the Army Corps' **final approval** for the pipeline in July quickly provoked a court complaint from the tribe.

On July 27, the tribe **hit the Corps with its suit** in D.C. district court alleging the agency flouted its obligations under the National Historic Preservation Act to consult with tribes on projects that stand to affect culturally important locations.

With Earthjustice representing it, the tribe also targeted the potential effects on the tribe's water supply of the pipeline project, especially a segment tunneling under Lake Oahe, a large reservoir on the Missouri River about a half mile upstream from the tribe's reservation — a point raised again by Archambault in a Wednesday op-ed piece in the New York Times.

But Dakota Access and the Army Corp both **told the D.C. court on Aug. 18** that a halt to construction was unwarranted, with the company arguing that both had done everything they reasonably could to accommodate Native American historical, cultural and religious interests in the project.

The company said that even a temporary delay in the project, which is about half complete, could cost \$430 million. And if the injunction drags on for a year, costs would near \$1.4 billion, with the potential for the entire project to fall apart if investors sour on the deal, the company said.

However, the tribe **argued** in a brief just before last Wednesday's hearing that any financial harm to Dakota Access from halting the project was "self-inflicted," claiming the company went forward with construction before receiving all the authorizations it needed.

Standing Rock Sioux Protests Spur Dakota Access Complaint

Not content just to make their voices heard in court, Standing Rock Sioux Tribe members led by Archambault and others have taken their protest to the Red Warrior Camp and the Camp of the Sacred Stones in Cannon Ball, North Dakota, with hundreds of protestors taking part in demonstrations there.

The protests went too far for the company's liking, prompting **its Aug. 15 complaint** in North Dakota federal court against Archambault and other protestors the company claimed had obstructed the pipeline work at the Lake Oahe crossing of the river, including unknown protestors who allegedly broke through law enforcement barriers and pelted vehicles, leaving the construction site with rocks and bottles.

While U.S. District Judge Daniel L. Hovland **granted an injunction** against the protesters the next day, finding that "the threat of the defendants' continued interference with Dakota Access' construction of the pipeline is real and poses a significant threat of irreparable harm," the company halted work at the site prior to Wednesday's hearing.

On Aug. 19, North Dakota Gov. Jack Dalrymple authorized an emergency declaration to provide extra funding for state and local law enforcement, saying in a statement that "unlawful acts associated with the protest near Cannon Ball have led to serious public safety concerns and property damage."

Tribal, Political, Environmental Opposition Grows

With the intensity of the protests, which led to the arrests of Archambault and others on Aug. 12, the controversy began to attract wider attention from tribal interests and public figures.

On Aug. 19, Judge Boasberg allowed the Cheyenne River Sioux Tribe to intervene in the suit supporting Standing Rock, although he refused the tribe's bid to participate in the preliminary injunction proceedings.

And other tribes have expressed their solidarity with the Standing Rock Sioux in trying to block the pipeline, with Cherokee Principal Chief Bill John Baker saying in a statement on the day of the D.C. hearing that "energy development in Indian Country is only responsible if it respects the sovereign rights of tribal governments and includes meaningful consultation with tribal officials."

The mounting opposition reached a media high point outside the D.C. court on Wednesday, with Hollywood actresses Susan Sarandon and Shailene Woodley joining scores of protestors rallying against the pipeline.

And support from inside and outside Indian Country for the Standing Rock Sioux continues to

roll in after the hearing.

In a Thursday letter, 31 tribal, environmental, tribal and landowner organizations sent a letter to President Barack Obama calling for the repeal of the Army Corps' permits for the pipeline.

Sen. Bernie Sanders, I-Vt., said in a statement Thursday that the Dakota Access project, like the rejected Keystone XL pipeline, "will transport some of the dirtiest fuel on the planet," lending his support to "the Standing Rock Sioux Tribe and the many tribal nations fighting this dangerous pipeline."

Meanwhile, Archambault, who has repeatedly called for peaceful protests against the project, said in his New York Times op-ed that the North Dakota encampment continues to grow, with almost 90 tribes now represented at the site.

Earthjustice's Tsosie said that the increased media coverage has helped draw focus to specific risks from the project, such as a rerouting of the planned pipeline that brought it nearer to the tribe's reservation.

"Issues like that, where the tribe is forced to bear the risk of not only construction of the pipeline but also the possibility of a leak, is something that needs to be known," Tsosie said.

In a statement Wednesday, Archambault said that whatever the result in the court, an important precedent has been set by showing the federal government and companies "that tribes will be heard on important matters that affect our vital interests," and that the opposition to the pipeline has "set the foundation for the future in terms of tribal unity."

Judge Boasberg said at the hearing that he needed more time to consider the injunction motion, and planned to issue his ruling by Sept. 9.

--Editing by Katherine Rautenberg and Philip Shea.